

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1851.02
COMPLAINT INVESTIGATOR:	Sandie Scudder
DATE OF COMPLAINT:	January 9, 2002
DATE OF REPORT:	February 8, 2002
REQUEST FOR RECONSIDERATION:	yes/revised March 8, 2002
DATE OF CLOSURE:	March 18, 2002

COMPLAINT ISSUES:

Whether the Northern Community Schools of Tipton County and the Kokomo Area Special Education Cooperative violated:

- 511 IAC 7-25-5(c) by failing to take one of the required actions within ten business days of receipt of the parent's request for an independent educational evaluation.
- 511 IAC 7-25-4(b) by failing to conduct an initial evaluation within 60 instructional days of the date of the parent's written consent for evaluation.
- 511 IAC 7-25-4(k) by failing to make a copy of the evaluation report available to the parent no later than five days prior to the date of the scheduled case conference committee (CCC) meeting.
- 511 IAC 7-27-7(d) by continuing to implement an individualized education program (IEP) that is more than 12 months old.
- 511 IAC 7-27-7(e) by failing to have an IEP in effect at the beginning of the school year.

FINDINGS OF FACT:

1. The student (Student) is 14 years old, is in 8th grade, and is eligible for special education and related services as a student with a learning disability and a communication disability.
2. The Complainant requested an independent educational evaluation and an independent occupational therapy (OT) evaluation on November 26, 2001. The director mailed a response to the Complainant on December 3, 2001, stating that the hearing officer found the evaluations appropriate for the Student; therefore, the Complainant's request for independent evaluations was denied. The hearing officer's written decision dated September 21, 2001, and the decision of the Board of Special Education Appeals dated November 29, 2001, specifically refer to the initial educational evaluation conducted on October 15, 1998. The evaluation was conducted to address academic concerns; there was no OT evaluation conducted at that time. The CCC determined the Student ineligible for special education in November 1998, but as the result of subsequent evaluations, the CCC determined the Student eligible in September 2000. The School conducted an OT evaluation on February 5, 2001, and the CCC decided that the Student would benefit from OT at the consultant level. Occupational therapy goals were discussed during the November 26, 2001, CCC meeting. The February 2001, OT evaluation was not an issue in the hearing.

3. On May 21, 2001, the Complainant requested that an independent central auditory processing evaluation be administered to the Student. The director responded to the Complainant's request on May 29, 2001, replying that the School would first need to administer the test. If the Complainant disagreed with the testing results, then an independent central auditory processing evaluation could be discussed. Two of the three components of the test were administered on June 15 and July 9, 2001. In order to complete the third component of the central auditory processing evaluation for the Student, appointments were scheduled with two audiologists employed by private agencies. Memos from the SLP, assistant director, the school coordinator, and the audiologist indicate that several appointments were scheduled, but later cancelled by the Complainant.
4. On August 20, 2001, the School hired an audiologist; however, the hearing equipment and the audiological booth were not installed in the school until October 30, 2001. The SLP contacted the Complainant on October 31, 2001, to schedule an appointment with the school audiologist for November 8, 2001. The Complainant cancelled the appointment and re-scheduled for November 15, 2001. The 60 instructional day timeline ended on November 8, 2001.
5. The complainant states that she received a copy of the central auditory processing evaluation on December 8, 2001, after the November 26, 2001, case conference. The Student completed the third component of the central auditory processing evaluation on November 15, 2001, and the three components were incorporated into one central auditory processing evaluation report on November 20, 2001. The School scheduled the case conference on November 26, 2001, to discuss the central auditory processing report, and acknowledges that the Complainant did not have access to the report prior to the CCC meeting.
6. The original IEP was developed on August 31 and September 1, 2000, and became effective on September 5, 2000. However, the IEP contains no duration date. The IEP was revised on October 10, 2000, and on March 30, 2001, but no duration date is identified. However, information on the goals and objectives pages indicates implementation is to occur through the end of the 2000-2001 school year. The CCC convened on August 28, 2001, but the Complainant requested that the CCC be adjourned because the central auditory processing evaluation was not completed. No IEP was developed at the August 28, 2001, CCC meeting, and there was no agreement to extend the old IEP in the interim. August 15, 2001, was the first day of school for the Student, and the IEP dated August 31 and September 1, 2000 would have been current; however, after September 5, 2001, the IEP was more than 12 months old. The School continued to implement this IEP until November 26, 2001.

CONCLUSIONS:

1. Finding of Fact #2 reflects that a hearing officer and the Board of Special Education Appeals determined that the previous educational evaluation conducted by the School was appropriate. There was no OT evaluation conducted as part of the previous educational evaluation, and the appropriateness of the February 2001, OT evaluation was not addressed in the hearing. Therefore, the School was required to grant the parent's request for the independent OT evaluation or deny the request and initiate a due process hearing. Because the School failed to take the requisite action, a violation of 511 IAC 7-25-5(c) is found with respect to the request for an independent OT evaluation.
2. Findings of Fact #3 and #4 indicate that the Complainant submitted a written request for the School to administer a central auditory processing evaluation to the Student. The 60-day timeline for completing the test and convening a CCC meeting ended on November 8, 2001. The final component of the central auditory processing evaluation was not conducted until November 15, 2001, due to the parent's cancellation of several scheduled appointments. The written report was

completed on November 20, 2001, and CCC convened on November 26, 2001. Because the delay in completing the evaluation and convening the CCC is due to the parent's cancellation of appointments, no violation of 511 IAC 7-25-4(b) is found.

3. Finding of Fact #5 reflects that the School agreed that the complainant did not receive a copy of the CAPD evaluation before the CCC convened on November 26, 2001. The evaluation report was completed on November 20, 2001, and could have been made available to the parent prior to the November 26, CCC meeting. Therefore, a violation of 511 IAC 7-25-4(k) is found.
4. Finding of Fact #6 establishes that the IEP developed at the beginning of the 2000-2001 school year had a starting date of September 5, 2000. However, the IEP contains no duration date for services as required by 511 IAC 7-27-6(a)(5). The only indication of duration of services is found on the goals and objectives pages, where it identifies dates that progress is to be reported through the end of the 2000-2001 school year. Although the CCC reviewed and revised portions of the IEP at various times during the school year, there is no indication that it extended the IEP or the goals and objectives beyond the 2000-2001 school year. The CCC, during any of its meetings during the 2000-2001 school year, could have changed the duration of the IEP beyond the end of the current school year. However, such a change must be documented in the CCC Report/IEP and agreed to by the parent. Because an IEP cannot be implemented for more than 12 months, and because there is nothing in the revised versions of the CCC Report/IEP to indicate a change in duration date, the IEP expired on September 5, 2001(12 months after the initiation date). The School continued to implement an IEP that was more than 12 months old. Therefore, a violation of 511 IAC 7-27-7(d) is found.
5. Finding of Fact #6 indicates that the Student's first day of school was August 15, 2001, and the IEP dated August 31 and September 1, 2000, was current at that time. Therefore, no violation 511 IAC 7-27-7(e) is found.

The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Northern Community Schools of Tipton County and the Kokomo Area Special Education Cooperative shall

1. provide a written response to the parent's request for an independent OT evaluation indicating that: (1) the independent OT evaluation will be provided at the School's expense OR (2) the School will not pay for the evaluation and will initiate a due process hearing. The response shall be mailed by certified mail, return receipt requested, no later than February 20, 2002. **A copy of the letter and the return receipt shall be submitted to the Division no later than March 1, 2002.**
2. If the School declines payment for an independent OT evaluation, **the School shall submit a request for the appointment of an independent hearing officer to the division no later than February 20, 2002.**
3. Submit a letter of assurance that a copy of the report of an initial or additional evaluation shall be provided to parents in accordance with 511 IAC 7-25-4(k). **The letter shall be submitted to the Division no later that February 20, 2002.**

4. Send a written memorandum to appropriate personnel reminding them that an IEP cannot be more than 12 months old. **Submit a copy of the memorandum, along with the names and titles of the individuals who received the memorandum, to the Division no later than March 1, 2002.**